

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

THY CHANN	§	
VS.	§	CIVIL ACTION NO. 1:10-CV-168
JOHN B. FOX, ET AL.	§	

ORDER PARTIALLY ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Thy Chann, a federal prisoner previously confined in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to the Federal Tort Claims Act (FTCA) and *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Warden John B. Fox, Lieutenant Carter, and unidentified defendants.

The Court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends dismissing the complaint pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). For the reasons stated in the Magistrate Judge's Report and Recommendation, the *Bivens* claims are frivolous and fail to state a claim upon which relief may be granted. The Magistrate Judge recommended dismissing the FTCA claim because

plaintiff failed to identify the United States of America as a defendant. In his objections, plaintiff states that he wishes to identify the United States of America as a defendant. Plaintiff's objections should be construed as an amended pleading, and he should be allowed to proceed with his FTCA claim.

ORDER

Accordingly, plaintiff's objections are **OVERRULED** with respect to the *Bivens* claims. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the Magistrate Judge is **ADOPTED** to the extent that the *Bivens* claims will be dismissed as frivolous and for failure to state a claim upon which relief may be granted. A partial judgment will be entered in this case in accordance this order.

So **ORDERED** and **SIGNED** this **22** day of **October, 2012**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge